

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

27024

**FILE:** B-212899

**DATE:** December 14, 1983

**MATTER OF:** Salon Tropical Restaurant, Tropical  
Sundries of Miami, Inc.

**DIGEST:**

1. Protest against invitation for bid's method of evaluation and award scheme is untimely under GAO Bid Protest Procedures because alleged impropriety concerns defect on face of solicitation and protest was not filed with GAO prior to bid opening.
2. GAO will not question the contracting officer's determination that a small business is nonresponsible where the Small Business Administration (SBA) affirms that determination by refusing to issue a certificate of competency (COC). In addition, GAO will not question the SBA's refusal to issue a COC absent a showing of fraud or bad faith.

Salon Tropical Restaurant, Tropical Sundries of Miami, Inc. (Salon), a small business, protests the award of a contract for food services to any firm other than itself, under invitation for bids (IFB) No. DLS-1-84, issued by the Department of Justice, Immigration and Naturalization Service (Immigration).

We dismiss the protest.

Salon alleges that the price evaluation formula contained in the solicitation does not result in award to the bidder offering the lowest cost to the government. The IFB requires that bidders quote unit prices for four separate meals: breakfast, lunch, evening meal, and boxed meal. Award is to be made based upon the lowest combined unit price for the four meals. Salon maintains that the cost of the contract to the government would be lower if the requirement had been solicited on the basis of total extended prices, i.e., unit prices multiplied by estimated quantities of meals to be ordered daily. In effect, Salon is protesting the method of bid evaluation and award.

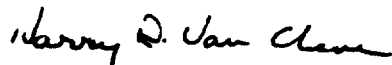
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Salon's complaint that the evaluation procedure in the IFB is improper is untimely. Our Bid Protest Procedures provide that protests alleging an impropriety in the IFB, where, as here, the impropriety is apparent prior to bid opening, must be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1983); Scobey Moving and Storage Co., B-186491, June 23, 1976, 76-1 CPD 402; Paragon Energy Corporation, B-202654, August 6, 1981, 81-2 CPD 101. Bid opening occurred on August 24, 1983. However, Salon did not protest to either Immigration or this Office prior to bid opening. Salon's protest was received by this Office on August 31, 1983. Accordingly, Salon's protest concerning this matter is untimely and will not be considered on the merits.

Salon also challenges the contracting officer's determination that Salon is a nonresponsible bidder and states that the Small Business Administration (SBA) improperly declined to issue Salon a certificate of competency (COC). Salon admits that it presently does not have the facilities and equipment necessary to perform the contract, but states that it would acquire them if awarded the contract.

Immigration referred the matter of Salon's nonresponsibility to the SBA for the possible issuance of a COC. The SBA has conclusive authority to determine the responsibility of a small business by issuing or declining to issue a COC. 15 U.S.C. § 637(b)(7) (1982). Thus, our Office will not question a contracting officer's determination that a small business is nonresponsible where the SBA affirms that determination by refusing to issue a COC. See Stoner - Caroga Corp. Inc., B-204307, August 26, 1981, 81-2 CPD 182. Nor will we question the SBA's refusal to issue a COC in the absence of a showing by a small business that the refusal stemmed from fraud or bad faith. See Dan's Janitorial Service & Supply, B-200360, January 22, 1981, 81-1 CPD 36. There is no evidence of fraud or bad faith here.

Protest dismissed.

  
Harry R. Van Cleve  
Acting General Counsel